Supreme Court, U.S.
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No. 99-750

In The

Supreme Court of the United States

October Term, 1999

Mitsue Takahashi,

Petitioner,

v.

Carolyn Phillips, an individual;
Milrod & Phillips,

Respondents.

Petition for Writ of Certiorari
To the Court of Appeal of the State
of California, Fifth Appellate District

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY MEMORANDUM

Respondents' first argument is that the Petition for Writ of Certiorari should not be granted because there are not grounds for the granting of the petition. Respondents argue that the petition does not state grounds that squarely fit into one of the grounds set forth in Rule 10 of the Rules of the Supreme Court of the United States. Respondents have taken a literal reading of Rule 10 rather than recognizing that the grounds enumerated in Rule 10 are neither mandatory nor controlling on consideration of a Petition for Writ of Certiorari.

Rule 10 reads, in part, as follows: "The following, while neither controlling nor fully measuring the Court's discretion, indicate the *character* of reasons that will be considered..." Emphasis added. Thereafter there are three grounds set forth upon which a Petition for Writ of Certiorari may be based. Respondents would suggest these three are exclusive, unbending and mandatory.

In the current matter, the Petition for Writ of Certiorari requests that this court grant review to consider whether petitioner's Due Process rights have been infringed upon by the actions of the California state courts. The California statutes and rules set forth in the Petition for Writ of Certiorari, as implemented by the California state courts, have not been interpreted by this court in light of a litigant's due process rights.

Thus, while the Petition for Writ of Certiorari may not squarely fit into one of the grounds set forth in Rule 10, as respondents suggest, there are grounds sufficient for this Court to grant review. Were petitioner's

due process rights under the Fourteenth Amendment infringed upon by the California courts' interpretation of California law. This issue fits within the "character of reasons" for the granting of review as Rule 10 clearly indicates. Respondents' reading of Rule 10 is far too narrow and should be rejected.

Respondents also argue that Taylor v. Bemiss, 110 U.S. 42, 46, 3 S.Ct. 441, 28 L.Ed. 64 (1884) applies only to the United States. While the literal reading of that case may support such an argument, respondents have demonstrated by this claim that the current Petition for Writ of Certiorari may well fit into the narrow reading of Rule 10 that respondents rely upon. If respondents are correct in their narrow reading of Rule 10, the reliance upon the fact that Taylor v. Bemiss only applies to the United States may in fact place the current matter within Rule 10.1(c); or, at least within the "character of the reason" set forth therein.

Throughout the Brief in Opposition, respondents argue the merits of the matter rather than address the only issue currently before this Court; that is, whether there are sufficient grounds upon which this Court may grant the petition. The repeated references to the merits, rather than the issue of whether review should be granted, are significant. In addition, there are inaccuracies in respondents' Statement of the Case, and respondents have narrowed the Question Presented far too much. Respondents arguments should be rejected and the Petition for Writ of Certiorari should be granted.

Respondents' second argument for denying the petition is that the Fourteenth Amendment does not apply as this matter is a "private matter between private

parties". This argument is again a restricted reading of the Petition for Writ of Certiorari and should be rejected.

The state action upon which to base petitioner's claim that her Fourteenth Amendment rights were infringed upon is clearly set forth in the Questions Presented and the Statement of the Case in the opening brief. Furthermore, it is the actions of the California state courts that are challenged. The Petition for Writ of Certiorari clearly addresses whether the state courts' actions in the proceedings in this matter infringed upon petitioner's Fourteenth Amendment rights. For example, should the state courts have allowed petitioner's former attorney to testify against her former client on matters that were prejudicial to her client, or should the state courts have allowed petitioner's initial trial attorney to withdraw when she failed to inform the trial court of a pending dispositive motion, among other actions of the state courts. Thus, the petition sets forth state action sufficient to base petitioner's claim that her Fourteenth Amendment right to due process was infringed upon. Respondents' arguments in this regard should be rejected.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: December 28, 1999